IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
ORDER

S.B. Civil Writ Petition No.5100/07
Rajesh Kumar Sharma
Vs.
Shravan Lal & Ors.

Date of Order :: 22nd October, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Sanjay Mehrishi, Advocate for petitioner.

The petitioner has challenged the order dated 22.5.2007 by which the learned Court below rejected his application to proceed with the objection petition filed by him as a regular suit, frame issues and record evidence in regard to claim of his possession over disputed property. Such objection was filed by the petitioner in execution proceedings of the decree dated 23.11.2004 passed against him in the civil suit filed by the respondent-decree holder. In fact, the petitioner filed objection petition on 30.3.2006 under Order 21 Rule

97, 98 and 101 of CPC read with Section 151 CPC on the premise that the petitioner was having possession of the disputed land for last 20-25 years and the Municipal Corporation during its survey found his possession proved over the land and the respondent Shravan Lal had no title over the said land. This application was contested by respondent Shrawan Lal as well as Municipal Corporation. The Municipal Corporation in reply to the said application asserted that the property in question belonged to it. However, on application filed by the decree-holder Shrawan Lal, the Executing Court by its order dated 30.10.2006 deleted the name of Municipal Corporation and at that stage, the aforesaid application was filed by the petitioner which has been rejected by the impugned order.

I have heard Shri Sanjay Mehrishi, the learned counsel for the petitioner.

Shri Sanjay Mehrishi argued that the Executing Court failed to appreciate that Order 21 Rule 97 CPC mandates that the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, is required to be adjudicated. The petitioner is in possession of the disputed property in his own right and the decree in question was not binding upon him because he was not party to the suit. The Executing Court therefore failed to exercise the jurisdiction vested in it under Order 21 Rule 98 to 103 CPC in entertaining the objection of the petitioner in suit. Learned counsel for the petitioner in support of his arguments relied on the judgment of Bombay High Court in Nusserwanji E. Poonegar & Ors. Vs. Mrs. Shrinbai F. Bhesania & Ors., AIR 1984 (Bom.) 357 and Rajeev Dutta & Ors. vs.

Punjab Wakf Board & Anr., AIR 2003 NOC 556 (HP).

I have given my thoughtful consideration to the arguments advanced by learned counsel for the petitioner and perused the material on record.

The application of the petitioner was rejected by the Executing Court on consideration of the fact that in the original suit, the decree holder claimed the dimension of the disputed property to be 128'.3 x 61' whereas its width actually was only 41 feet. The judgment-debtor denied the title of the decree-holder and therefore issue no.4 was framed to that effect. That issue was decided against the plaintiff-decree-holder. In appeal, however, he did not challenge the finding on issue no.4. It is in this context that the objector is now claiming title of the property as it was in his possession, whereas the decree-holder has taken a

categorical stand that objector has nothing to do with the property. It was father of the petitioner-objector who had acknowledged in the original suit himself as tenant in the property having dimension of 41 feet x 128.3 feets. The Executing Court held that all those documents are available on record and therefore there was no need to again proceed as a regular suit and record evidence and objection could be decided by appreciating the arguments of the parties in the light of evidence available on record.

In those facts, the Executing Court rejected the objection and reason given by the Executing Court cannot be faulted with. Already when evidence was recorded in the suit and all that material is available on record, treating the objection filed by the petitioner as suit would only frustrate the decree which was upheld even upto this Court in a second appeal. The judgments

which have been relied on by learned counsel for the petitioner turned out on their own facts and cannot be applied to the facts of this case.

I do not find any merit in this writ petition. The writ petition is therefore dismissed summarily.

(Mohammad Rafiq),J.

RS/-